COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Investigation by the Department of Telecommunications and Energy on its own motion pursuant to G.L. c. 159, §§ 12 and 16, into Verizon New England Inc., d/b/a Verizon Massachusetts' provision of Special Access Services.	)	**D.T.E. 01-34**

MOTION FOR CONFIDENTIAL TREATMENT

Verizon Massachusetts ("Verizon MA") hereby requests that the Department grant this Motion to provide confidential treatment of data provided by Verizon MA in its response to WorldCom's Information Request Nos. 1-1 and 1-2 ("WCOM-IR-1-1 and 1-2") filed on March 28, 2002. As shown below, that data qualifies as a "trade secret" or "confidential, competitively sensitive, proprietary information" under Massachusetts law and, therefore, is entitled to protection from public disclosure in this proceeding.

ARGUMENT

In determining whether certain information qualifies as a "trade secret,"[1] Massachusetts courts have considered the following:

[1] Under Massachusetts law, a trade secret is "anything tangible or electronically kept or stored which constitutes, represents, evidences or records a secret scientific, technical, merchandising, production or management information design, process, procedure, formula, invention or improvement." Mass. General Laws c. 266, § 30; see also Mass. General Laws c. 4, § 7. The Massachusetts Supreme Judicial Court ("SJC"), quoting from the Restatement of Torts, § 757, has further stated that "[a] trade secret may consist of any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors ... It may be a formula treating or preserving material, a pattern for a machine or other device, or a list of customers." J.T. Healy and Son, Inc. v. James Murphy and Son, Inc., 260 N.E.2d 723, 729 (1970). Massachusetts courts have frequently indicated that "a trade secret need not be a patentable invention." Jet Spray Cooler, Inc. v. Crampton, 385 N.E.2d 1349, 1355 (1979).

(1) the extent to which the information is known outside of the business;

(2) the extent to which it is known by employees and others involved in the business;

(3) the extent of measures taken by the employer to guard the secrecy of the information;

(4) the value of the information to the employer and its competitors;

(5) the amount of effort or money expended by the employer in developing the information; and

(6) the ease of difficulty with which the information could be properly acquired or duplicated by others.

Jet Spray Cooler, Inc. v. Crampton, 282 N.E.2d 921, 925 (1972).

The protection afforded to trade secrets is widely recognized under both federal and state law. In Board of Trade of Chicago v. Christie Grain & Stock Co., 198 U.S. 236, 250 (1905), the U.S. Supreme Court stated that the board has "the right to keep the work which it had done, or paid for doing, to itself." Similarly, courts in other jurisdictions have found that "[a] trade secret which is used in one's business, and which gives one an opportunity to obtain an advantage over competitors who do not know or use it, is private property which could be rendered valueless ... to its owner if disclosure of the information to the public and to one's competitors were compelled." Mountain States Telephone and Telegraph Company v. Department of Public Service Regulation, 634 P.2d 181, 184 (1981).

In its replies to WCOM-IR-1-1 and 1-2, Verizon MA provided detailed, customer-specific information regarding particular service orders placed by Verizon New York's carrier and end-user customers. Such customer-specific data would qualify as

"trade secret" or "confidential, competitively sensitive proprietary information" under Massachusetts law because it could provide useful significant business and/or marketing information to potential competitors that cannot be reasonably duplicated or readily obtained from non-Company sources. In addition, Verizon MA is not at liberty to disclose publicly this customer-specific data without the express written permission of the affected parties. This is because customers have a reasonable expectation that the specific details of their business relationship with Verizon (*e.g.*, the content of their special service order requests) would remain private and confidential, and not be divulged in a public forum, particularly in this competitive environment. Failure to afford such confidential protection to customer-specific data would, therefore, potentially infringe on third parties' rights.

Verizon MA's request for confidentiality is also consistent with its treatment of other carrier or end-user customer-specific data in this and other proceedings. *See e.g.*, Verizon MA's June 1, 2001, and March 6, 2002, Motions for Confidential Treatment (D.T.E. 01-34). The same arguments to protect *other* customer data, as stated in those respective Motions, would apply here. There is no reasonable basis to treat customer-specific data differently for confidentiality purposes.

A standard Protective Agreement would properly limit the use of customer-specific data to the preparation and conduct of this proceeding. No party has filed any objection to Verizon MA's provision of WCOM 1-1 and 1-2 pursuant to a Protective Agreement. Likewise, no compelling need exists for public disclosure of Verizon MA's proprietary responses to WCOM -IR-1-1 and 1-2 should the Department consider this

material in connection with issues raised in this proceeding.[2] Accordingly, Verizon MA's interest in preserving the confidentiality of the data should far outweigh any interest in public disclosure, which would necessarily provide unfettered access to confidential, customer-specific information by placing it in the public domain.

WHEREFORE, for the foregoing reasons, Verizon MA respectfully requests that the Department grant this Motion.

Respectfully submitted,

VERIZON MASSACHUSETTS

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Dated: April 9, 2002

[2] It should be noted that Verizon MA also objected to WCOM-IR-1-1 and 1-2 as irrelevant and immaterial because the information requested relates to New York circuits ordered almost two years ago and is, therefore, beyond the scope of this investigation.